



February 28, 2003

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## SENATE BILL No. 379

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DIGEST OF SB 379 (Updated February 25, 2003 2:00 PM - DI 106)

**Citations Affected:** IC 27-2; IC 34-46.

**Synopsis:** Internal insurance compliance audits. Makes certain information related to voluntary, internal insurance compliance audits privileged information.

**Effective:** July 1, 2003.

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**Alting, Long**

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January 16, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.  
February 27, 2003, amended, reported favorably — Do Pass.

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SB 379—LS 7723/DI 97+



February 28, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## SENATE BILL No. 379

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 27-2-21 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2003]:

4 **Chapter 21. Privilege Applying to Internal Insurance**  
5 **Compliance Audits**

6 **Sec. 1. As used in this chapter, "department" means the**  
7 **department of insurance established by IC 27-1-1-1.**

8 **Sec. 2. As used in this chapter, "insurance compliance audit"**  
9 **means a voluntary internal evaluation, review, assessment, audit,**  
10 **or investigation for the purpose of:**

- 11 (1) **identifying noncompliance;**  
12 (2) **preventing noncompliance; or**  
13 (3) **promoting compliance;**

14 **with laws, regulations, orders, or industry or professional**  
15 **standards, conducted by or on behalf of an insurer or activity**  
16 **licensed or regulated under IC 27.**

17 **Sec. 3. As used in this chapter, "insurance compliance audit**

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document" means a document prepared in connection with an insurance compliance audit. An insurance compliance audit document:

(1) may include:

(A) a written response to the findings of an insurance compliance audit; and

(B) field notes and records of:

(i) observations;

(ii) findings;

(iii) opinions;

(iv) suggestions;

(v) conclusions;

(vi) drafts;

(vii) memoranda;

(viii) drawings;

(ix) photographs;

(x) exhibits;

(xi) computer generated or electronically recorded information;

(xii) phone records;

(xiii) maps;

(xiv) charts;

(xv) graphs; and

(xvi) surveys;

prepared in the course of an insurance compliance audit; and

(2) includes any of the following:

(A) An insurance compliance audit report:

(i) prepared by an auditor who is an employee of the insurer or an independent contractor; and

(ii) that may include the scope of the audit, the information gained in the audit, and conclusions and recommendations, with exhibits and appendices.

(B) Memoranda and documents analyzing portions or all of an insurance compliance audit report and discussing potential implementation issues.

(C) An implementation plan that addresses:

(i) corrections of previous noncompliance;

(ii) improvement of current compliance; and

(iii) prevention of future noncompliance.

(D) Analytic data generated in the course of conducting the insurance compliance audit.

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1       Sec. 4. As used in this chapter, "insurer" has the meaning set  
2       forth in IC 27-1-2-3.

3       Sec. 5. Except as provided in this chapter, an insurance  
4       compliance audit document is privileged information and is not  
5       discoverable or admissible as evidence in any civil or  
6       administrative proceeding.

7       Sec. 6. Except as provided in this chapter, an individual involved  
8       in preparation of an insurance compliance audit or insurance  
9       compliance audit document is not subject to examination  
10      concerning the insurance compliance audit or insurance  
11      compliance audit document in a civil or administrative proceeding.  
12      However, if the insurance compliance audit, insurance compliance  
13      audit document, or a portion of the insurance compliance audit or  
14      insurance compliance audit document is not privileged, the  
15      individual may be examined concerning the portion of the  
16      insurance compliance audit or insurance compliance audit  
17      document that is not privileged.

18      Sec. 7. The commissioner shall:

19          (1) not provide to any person an insurance compliance audit  
20          document provided to the commissioner:

21              (A) voluntarily; or

22              (B) at the request of the commissioner under a claim of  
23              authority to compel disclosure under section 12 of this  
24              chapter; and

25          (2) treat an insurance compliance audit document as  
26          confidential information for purposes of IC 27-1-3-10.5  
27          without waiving the privileges established under sections 5  
28          and 6 of this chapter.

29      An insurance compliance audit document provided as described in  
30      subdivision (1) may not be used for any purpose other than to  
31      determine whether disclosed defects in an insurer's policies and  
32      procedures or inappropriate treatment of customers has been  
33      remedied or that an appropriate plan for remedy is in place.

34      Sec. 8. An insurance compliance audit document that is  
35      provided to the commissioner is subject to applicable statutory or  
36      common law privilege, including:

37          (1) the work product doctrine;

38          (2) attorney-client privilege; or

39          (3) the subsequent remedial measures exclusion.

40      An insurance compliance audit document provided to the  
41      commissioner is the property of the insurer and is confidential.

42      Sec. 9. An insurer that discloses an internal compliance audit

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document to a governmental entity:

(1) voluntarily; or

(2) as required by law;

does not waive a privilege established under section 5 or 6 of this chapter with respect to any other person or governmental entity.

Sec. 10. A privilege established under section 5 or 6 of this chapter does not apply to the extent that the privilege is expressly waived by the insurer that prepared or caused to be prepared an insurance compliance audit document.

Sec. 11. A privilege established under section 5 or 6 of this chapter does not apply in the following circumstances:

(1) If a court, after an in camera review, requires disclosure in a civil or administrative proceeding after determining at least one (1) of the following:

(A) The privilege is asserted for a fraudulent purpose.

(B) The material is not subject to the privilege as provided under section 17 of this chapter.

(C) The insurer fails to undertake a reasonable plan of corrective action or eliminate noncompliance with applicable laws within a reasonable period.

(2) If a court, after an in camera review, requires disclosure in a criminal proceeding after determining at least one (1) of the following:

(A) The privilege is asserted for a fraudulent purpose.

(B) The material is not subject to the privilege as provided under section 17 of this chapter.

(C) The material contains evidence relevant to the commission of a criminal offense.

(D) The insurer fails to undertake a reasonable plan of corrective action or eliminate noncompliance with applicable laws within a reasonable period.

Sec. 12. (a) Not more than thirty (30) days after the commissioner, the attorney general, or a pleading party in a civil action makes a written request by certified mail for disclosure of an insurance compliance audit document, the insurer that prepared the insurance compliance audit document or caused the insurance compliance audit document to be prepared may file a petition in a court with jurisdiction in the same venue chosen by the original pleader requesting an in camera hearing to determine whether the insurance compliance audit document or portions of the insurance compliance audit document are subject to disclosure.

(b) Failure by an insurer to file a petition under subsection (a)



1 waives the privilege provided under this chapter for the insurance  
2 compliance audit document that is the subject of a request for  
3 disclosure under subsection (a).

4 (c) An insurer asserting a privilege established under section 5  
5 or 6 of this chapter in response to a request for disclosure under  
6 subsection (a) shall include in the insurer's petition for an in  
7 camera hearing all of the information listed in section 13 of this  
8 chapter.

9 (d) Not more than thirty (30) days after an insurer files a  
10 petition under subsection (a), the court shall issue an order  
11 scheduling an in camera hearing to determine whether the  
12 insurance compliance audit document or portions of the audit  
13 document are privileged or are subject to disclosure.

14 Sec. 13. An insurer asserting a privilege established under  
15 section 5 or 6 of this chapter in response to a request for disclosure  
16 under section 12 of this chapter shall provide to the commissioner,  
17 the attorney general, or a pleading party in a civil matter, at the  
18 time the insurer files an objection to the disclosure, all of the  
19 following information:

- 20 (1) The date of the insurance compliance audit document.
- 21 (2) The identity of the person that conducted the insurance
- 22 compliance audit.
- 23 (3) The general nature of the activities covered by the
- 24 insurance compliance audit.
- 25 (4) An identification of the portions of the insurance
- 26 compliance audit document for which the privilege is asserted.

27 Sec. 14. (a) An insurer that asserts a privilege established under  
28 section 5 or 6 of this chapter has the burden of demonstrating the  
29 applicability of the privilege.

30 (b) After an insurer has established the applicability of a  
31 privilege under subsection (a), the pleading party in a civil action,  
32 including the commissioner or attorney general, that seeks  
33 disclosure for the cause described in section 11(1)(A) or 11(1)(B) of  
34 this chapter has the burden of proving that the privilege is asserted  
35 for a fraudulent purpose or that the insurer failed to undertake  
36 reasonable corrective action or failed to eliminate noncompliance  
37 within a reasonable period.

38 Sec. 15. (a) The parties described in section 12 of this chapter  
39 may at any time stipulate in legal proceedings before a court under  
40 this chapter to entry of an order directing whether specific  
41 information contained in an insurance compliance audit document  
42 is subject to a privilege established under section 5 or 6 of this

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chapter.

(b) A stipulation described in subsection (a) may be limited to the instant proceeding and, absent specific language to the contrary, is not applicable in any other proceeding.

Sec. 16. A privilege established under section 5 or 6 of this chapter does not extend to the following:

(1) Documents, communications, data, reports, or other information expressly required to be collected, developed, maintained, or reported to a regulatory entity under this title, other state law, or federal law.

(2) Information obtained through observation or monitoring by any regulatory entity.

(3) Information obtained from a source independent of an insurance compliance audit.

(4) Documents, communications, data, reports, memoranda, drawings, photographs, exhibits, computer records, maps, charts, graphs, surveys, and other materials prepared or maintained in the ordinary course of insurance business and not in relation to an insurance compliance audit.

Sec. 17. (a) If a privilege established under section 5 or 6 of this chapter does not apply as described in sections 8 and 9 of this chapter, a court may compel the disclosure of only those portions of an insurance compliance audit document relevant to issues in dispute in the underlying proceeding.

(b) Information required to be disclosed under subsection (a) is not public information, and a privilege established under section 5 or 6 of this chapter that otherwise applies to the information is not waived for purposes of another civil, criminal, or administrative proceeding.

Sec. 18. This chapter does not limit, waive, or abrogate the scope or nature of a statutory or common law privilege other than a privilege established under this chapter.

Sec. 19. Nothing in this chapter shall be construed to limit the department's authority to compel the disclosure of documents necessary to further its general regulatory purpose.

SECTION 2. IC 34-46-2-25.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 25.4. IC 27-2-21 (Concerning certain information related to internal insurance compliance audits).



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## COMMITTEE REPORT

Mr. President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred Senate Bill No. 379, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 5 and 6, begin a new paragraph and insert:

**"Sec. 1. As used in this chapter, "department" means the department of insurance established by IC 27-1-1-1."**

Page 1, line 6, delete "1." and insert "2."

Page 1, line 9, after "identifying" delete "or" and insert **"noncompliance;**

**(2)"**.

Page 1, line 10, delete "(2)" and insert **"(3)"**.

Page 1, line 14, delete "2." and insert **"3."**

Page 2, line 22, delete "collected or".

Page 2, line 23, delete "audit or attached as an exhibit to an insurance" and insert "audit; and".

Page 2, delete line 24.

Page 2, line 41, delete "3." and insert **"4."**

Page 3, line 1, delete "4." and insert **"5."**

Page 3, line 3, delete "civil, criminal," and insert **"civil"**.

Page 3, line 5, delete "5." and insert **"6."**

Page 3, line 9, delete "civil, criminal," and insert **"civil"**.

Page 3, line 16, delete "6." and insert **"7."**

Page 3, line 21, delete "11" and insert **"12"**.

Page 3, line 25, delete "4" and insert **"5"**.

Page 3, line 26, delete "5" and insert **"6"**.

Page 3, line 32, delete "7." and insert **"8."**

Page 3, line 40, delete "8." and insert **"9."**

Page 4, line 2, delete "4 or 5" and insert **"5 or 6"**.

Page 4, line 4, delete "9." and insert **"10."**

Page 4, line 4, delete "4 or 5" and insert **"5 or 6"**.

Page 4, line 8, delete "10." and insert **"11."**

Page 4, line 8, delete "4 or 5" and insert **"5 or 6"**.

Page 4, line 15, delete "16" and insert **"17"**.

Page 4, line 24, delete "16" and insert **"17"**.

Page 4, line 30, delete "11." and insert **"12."**

Page 4, line 36, delete "of competent" and insert **"with"**.

Page 4, line 36, after "jurisdiction" insert **"in the same venue chosen by the original pleader"**.

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Page 5, line 2, delete "4" and insert "5".  
 Page 5, line 3, delete "5" and insert "6".  
 Page 5, line 5, delete "12" and insert "13".  
 Page 5, line 12, delete "12." and insert "13".  
 Page 5, line 13, delete "4 or 5" and insert "5 or 6".  
 Page 5, line 14, delete "11" and insert "12".  
 Page 5, line 25, delete "13." and insert "14".  
 Page 5, line 26, delete "4 or 5" and insert "5 or 6".  
 Page 5, line 29, delete ":" and insert ",".  
 Page 5, line 30, delete "(1)".  
 Page 5, run in lines 29 through 30.  
 Page 5, line 32, delete "10(1)(A) or 10(1)(B)" and insert "11(1)(A)  
 or 11(1)(B)".  
 Page 5, line 36, delete "; and" and insert ".".  
 Page 5, delete lines 37 through 40.  
 Page 5, line 41, delete "14." and insert "15".  
 Page 5, line 41, delete "11" and insert "12".  
 Page 6, line 3, delete "4 or 5" and insert "5 or 6".  
 Page 6, line 8, delete "15." and insert "16".  
 Page 6, line 8, delete "4 or 5" and insert "5 or 6".  
 Page 6, line 23, delete "16." and insert "17".  
 Page 6, line 23, delete "4 or 5" and insert "5 or 6".  
 Page 6, line 24, delete "7 and 8" and insert "8 and 9".  
 Page 6, line 30, delete "4 or 5" and insert "5 or 6".  
 Page 6, line 33, delete "17." and insert "18".  
 Page 6, between lines 35 and 36, begin a new paragraph and insert:  
**"Sec. 19. Nothing in this chapter shall be construed to limit the  
 department's authority to compel the disclosure of documents  
 necessary to further its general regulatory purpose."**

and when so amended that said bill do pass.

(Reference is to SB 379 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 6, Nays 5.

